

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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|----------------------|---|----------------------------|
| ALEJANDRO F. MICHEL, |) | No. C 08-1724 JSW (PR) |
| |) | |
| Petitioner, |) | |
| |) | ORDER TO SHOW CAUSE |
| vs. |) | |
| |) | |
| J. WALKER, Warden, |) | |
| |) | (Docket No. 2) |
| Respondent. |) | |
| _____ |) | |

INTRODUCTION

Petitioner, a prisoner of the State of California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging his state court conviction. Petitioner has paid the filing fee. His motion to file the instant petition is GRANTED (docket no. 2). This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner pled guilty in 2003 to multiple counts of robbery and attempted robbery, as well as to a firearm enhancement, in Marin County Superior Court. Based on this guilty plea, the trial court sentenced him to a term of 12 years and four months in state prison. He filed habeas petitions in the superior, appellate and supreme courts, all of which were denied. Thereafter, he filed the instant federal petition.

DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

II Legal Claims

Petitioner claims that his sentence violated his right to a jury trial because the trial court imposed an upper term based on facts that were neither found by a jury nor admitted by petitioner.¹ Liberally construed, this claim is sufficient to warrant a response from Respondent.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)** days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant

¹Petitioner also asserts that the trial court erred in denying his habeas petition in which he made this same argument. The Court does not view this assertion as a separate claim.

1 to a determination of the issues presented by the petition. If Petitioner wishes to respond
2 to the answer, he shall do so by filing a traverse with the Court and serving it on
3 Respondent within **thirty (30)** days of his receipt of the answer.

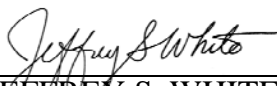
4 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
5 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
6 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
7 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
8 days of receipt of the motion, and Respondent shall file with the Court and serve on
9 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

10 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
11 the Court informed of any change of address by filing a separate paper captioned "Notice
12 of Change of Address." He must comply with the Court's orders in a timely fashion.
13 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
14 to Federal Rule of Civil Procedure 41(b).

15 This order terminates Docket No. 2.

16 IT IS SO ORDERED.

17 DATED: May 13, 2008

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19 JEFFREY S. WHITE
20 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ALEJANDRO F. MICHEL,
Plaintiff,

Case Number: CV08-01724 JSW

CERTIFICATE OF SERVICE

v.


WILLIAM T. SULLIVAN et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 13, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alejandro F. Michel
T86169
CSP-Sacramento
P.O. Box 290066
Represa, CA 95671

Dated: May 13, 2008


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk